

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

UNVERFERTH MFG. CO., INC.,	)	
601 South Broad Street	)	Case No. 2:11-CV-184
Kalida, Ohio 45853	)	
	)	District Judge Watson
Plaintiff,	)	
	)	Magistrate Judge Preston Deavers
v.	)	
	)	
CRUSTBUSTER/SPEED KING, INC.,	)	
2300 East Trail Street	)	
Dodge City, Kansas 67801,	)	
	)	
Defendant.	)	

**FIRST AMENDED COMPLAINT**

Pursuant to Federal Civil Rule 15, for its First Amended Complaint, Plaintiff, Unverferth Manufacturing Company, Inc. (“Unverferth”), by and through the undersigned counsel, hereby alleges as follows:

**THE PARTIES**

1. Plaintiff Unverferth is a corporation organized and existing under the laws of the State of Ohio having a principal place of business at 18107 U.S. Route 224, Kalida, Ohio 45853.

2. Upon information and belief, Defendant CrustBuster/Speed King, Inc. (“CrustBuster”) is a corporation organized and existing under the laws of the State of Kansas having a principal place of business at Dodge City, Kansas, and is doing business in the State of Ohio.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant by virtue of, at a minimum, Defendant's ongoing presence and conduct in this judicial District, including, upon information and belief, the location of sales offices and the sale and offers for sale of CrustBuster products in this judicial district, in Fayette and Clinton Counties, Ohio.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b), in that the Defendant has committed acts of infringement in Fayette and Clinton Counties, Ohio, and has sales offices in those counties.

### **NATURE OF THE ACTION**

6. Unverferth is a leading manufacturer and marketer of a variety of farming equipment including spraying and tillage equipment, hay, manure and grain handling equipment, and agricultural dual and specialty changeover wheels. Unverferth is a family-owned, Ohio company, which has been serving America's farm operations since 1948.

7. Unverferth has a history of innovation. One significant innovation by Unverferth is the loading and unloading seed tender. Unverferth's patented design (*viz.*, the patent-in-suit) not only allows it to fill planters and drills, but the seed tend can fill itself for safer and easier unloading of bulk bagged or boxed seed, or can be positioned 90 degrees to transfer seed from one container to another.

8. On March 30, 1999, the United States Patent and Trademark Office duly and properly issued the United States Patent No. 5,888,044 ("the '044 patent"), which is attached hereto as Exhibit A. The '044 patent is directed to Unverferth's innovative seed tender design.

9. Plaintiff Unverferth is, and has been since February 2001, the owner of record of the '044 patent.

10. Upon information and belief, the CrustBuster 330 Tender (the "Accused Product") includes a conveyor and support structure that allows the conveyor to be selectively

swiveled at least 180 degrees about the outer end of a boom, thereby allowing both loading and unloading of the storage bin.

11. Upon information and belief, the Defendant became aware of the incredible commercial success of Unverferth's loading and unloading seed tender, and copied Unverferth's patented design.

12. Since at least 2009, Unverferth has placed the required statutory notice on its loading and unloading seed tender which it manufactures and sells under the '044 patent, and has given written notice to Defendant of its infringement.

13. Accordingly, Plaintiff Unverferth brings this action for patent infringement of the '044 patent, under 35 U.S.C. § 271(a).

14. Plaintiff Unverferth has been harmed, and will continue to be harmed, by Defendant's sales and offers for sale of infringing products. Plaintiff Unverferth sells one or more farm implements covered by at least claim 1 of the '044 patent and will lose profits and customer goodwill and be damaged by irreversible price erosion if Defendant is permitted to continue to manufacture, use, sell and/or offer for sale its infringing product(s).

15. It is in the interest of the public for the Court to enforce Plaintiff's patent rights.

#### **INFRINGEMENT OF THE '044 PATENT**

16. Plaintiff repeats and realleges the allegations of Paragraphs 1 to 15 above, as if set forth herein.

17. Upon information and belief, Defendant has infringed and continues to infringe at least claim 1 of the '044 patent by making, using, offering for sale and/or selling infringing product(s), and will continue to do so unless enjoined by this Court.

18. Upon information and belief, Defendant had knowledge of the '044 patent when it started to copy Unverferth's product, and its acts of infringement constitute willful infringement of the '044 patent.

19. Defendant's infringement of the '044 patent has damaged Plaintiff and will continue to cause Plaintiff substantial and irreparable harm unless enjoined by this Court.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court enter judgment that:

- A. the '044 patent is infringed by Defendant;
- B. Defendant's infringement of the '044 patent has been willful;
- C. Defendant be preliminarily and permanently enjoined from manufacturing, using, selling, and offering to sell the Accused Product, and any others that infringe, in the United States;
- D. Plaintiff be awarded damages adequate to compensate it for Defendant's infringement of the '044 patent, including lost profits, but in an amount no less than a reasonable royalty, and that such damages be trebled according to 35 U.S.C. § 284;
- E. this case is exceptional within the meaning of 35 U.S.C. § 285, and that all costs and expenses of this action, including reasonable attorneys' fees, be awarded to Plaintiff; and
- F. Plaintiff be awarded such further relief as the Court may deem just, necessary, and/or proper.

#### **JURY DEMAND**

Plaintiffs demand a trial by jury.

Respectfully submitted,

/s/ Scott A. Campbell

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